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PROFFER PERFORMANCE AGREEMENT

This Agreement, made and entered into this 16th day of January, 2014, by and between Kirkpatrick Green, LLC (hereinafter called "**Developer**"); and **THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA**, a body politic (hereinafter called "**Board**").

WHEREAS, Developer is obligated by the Proffers of Kirkpatrick West to construct the specific ~~[public]~~ improvements described in paragraph 1 below; and

WHEREAS, pursuant to [~~\$540.12 of the 1972 Loudoun County Zoning Ordinance~~][§6-1209 of the 1993 Loudoun County Zoning Ordinance], the Zoning Administrator has required a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of said improvements; and

WHEREAS, in consideration of the foregoing premises and in further consideration of the approval by the Board of the plat, plans or profiles of the subdivision/site plan known as "Kirkpatrick West Community Recreation Center", designated as County application number ~~CEP~~/STPL 2007-0037, and any and all revisions thereof however such revisions may be redesignated (the "**Plans**"), and the Board not requiring the following work to be completed prior to the approval and/or recordation of the plat of said subdivision/site plan, the Developer, its successors and assigns agrees to do the following work within 24 months from the date hereof:

1. To construct all physical improvements in accordance with the Plans and all applicable laws and regulations, including, without limitation, applicable provisions of the Loudoun County Subdivision and Zoning Ordinances, including the concept development plan and proffers

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and all attachments, governing such Plans (with laws, regulations and ordinances to take precedence over Plans in the event of conflict), including, but not limited to, adequate storm drainage system both on the subject property and on adjacent properties as needed, ~~[the construction of streets and roads in accordance with current standards of the Virginia Department of Transportation ("VDOT"),]~~ and the submission of as-built plans for all such [public] improvements. The specific [public] improvements to be constructed pursuant to this Agreement are as follows:

Construction of the active recreation
facilities pursuant to Proffer V.B.2
of ZMAP 2002-0001, Kirkpatrick West.

and

2. To provide adequate supervision on the project site during the installation of all required improvements and a responsible superintendent or foreman together with one (1) set of approved Plans on the project site at all times when work is being performed; and

~~[3. To comply with all requirements of VDOT in order that the streets will be accepted by VDOT for operation and maintenance, and the Developer agrees to make prompt application to VDOT for acceptance of such improvements into the state system and diligently to pursue and carry out all actions necessary to process such application until such acceptance has been achieved; and]~~

4. To maintain dust control on the project site at all times; and

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5. To provide for the adequate control of erosion and sedimentation by temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction; and

~~[6. To provide and maintain convenient, safe, unobstructed, all-weather access to all those premises which are occupied by owners or occupants other than the Developer or its agents, until such premises are accessible via public streets that have been accepted for maintenance and operation by VDOT and promptly to repair any deterioration or damage to completed work for which partial but not complete reduction in the amount of the security has been approved; and]~~

7. To perform all overlot grading in accordance with approved Plans; and

[8. To install all traffic warning and regulatory signs and devices required by the approved Plans during construction and to maintain said signs and devices in an operable condition until streets are accepted for maintenance and operation by VDOT. All traffic signs shall be kept in proper position, clean, and legible at all times. Damaged signs shall be replaced immediately. Special care shall be taken to see that weeds, shrubbery, construction materials, and snow are not allowed to obscure the face of any sign; and]

9. To maintain control on the project site at all times so that mud is not tracked out of the project by vehicle tires and deposited on adjacent streets of the state system, or such other streets as may be adjacent to the project site.

10. It is agreed and understood that final approval of completed work can only be given by the Zoning Administrator of Loudoun County, Virginia.

11. It is agreed and understood that in the event the Developer shall default in its obligations under this Agreement and it becomes necessary for the Board to institute legal proceed-

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ings to enforce compliance with said obligations or to obtain reimbursement for costs incurred in fulfilling said obligations on behalf of the Developer, the Developer shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred.

[12. Developer hereby agrees to provide security in the form of a cash escrow deposit in the amount of \$ N/A, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. The said deposit is delivered herewith by certified check, receipt of which is hereby acknowledged by the Board. Such amount shall be placed in an escrow account with the Treasurer of Loudoun County until drawn upon by the Board or returned to Developer as provided herein and in the Bonding Policy of Loudoun County, Virginia. All interest accruing on this account shall be paid to the same party to whom the principal is paid, except that, in any event, five percent (5%) of any interest accrued may be retained by the Treasurer to cover the cost of administering the account. The Developer hereby ratifies and reaffirms its agreement that the said funds deposited as cash escrow are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer or its successors and assigns.]

OR

[12. Developer hereby agrees to provide security in the form of a [Letter of Credit] [~~Corporate Surety Bond~~] in the amount of \$ 403,000.00, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. Such [~~Bond~~] [Letter of Credit] Numbered 99992357 is attached hereto and made a part hereof, and the Developer hereby ratifies and reaffirms its agreement that the said

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funds represented by the ~~Bond~~ [Letter of Credit] are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer, its successors and assigns.]

13. If the ~~Bond~~ [Letter of Credit] provided to the Board pursuant to the preceding paragraph becomes not an acceptable form of surety or security, whether as a result of the failure of the issuing [Bank] [~~Surety Company~~] to achieve the rating required by the Board's duly adopted Bonding Policy or as a result of any other failure of such ~~Bond~~ [Letter of Credit] to satisfy any of the other criteria established by said Bonding Policy for acceptable forms of surety or security, then the Developer shall, upon request of the Zoning Administrator, promptly provide a substitute surety or security satisfactory to the Board. Failure of the Developer to furnish such substitute surety or security within sixty (60) days after the Zoning Administrator mails such request to the Developer by certified mail with return receipt requested shall constitute a default and a failure to perform in accordance with this Agreement and a failure to discharge its obligations under this Agreement, such that the Board may, thereafter, without further notice, call upon such ~~Bond~~ [Letter of Credit] for payment in accordance therewith.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the [~~partnership agreement~~] [~~charter, bylaws and action of the Board of Directors~~] [articles of organization, operating agreement or majority vote of the members] of the Developer.

IN WITNESS WHEREOF, the Developer has caused its name and seal to be affixed hereto, by David Rennion, its duly authorized representative.

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Developer: Kirkpatrick Green, LLC

By: David Bennion (SEAL)
Vice President
Title

COMMONWEALTH OF VIRGINIA,
COUNTY OF London to wit:

I, Michelle Butler, a Notary Public in and for the jurisdiction
aforesaid, do hereby certify that on the 16th day of January, 2014,
David Bennion as Vice President of Kirkpatrick Green, LLC
whose name is signed to the affixed Agreement, personally appeared before me in my jurisdiction,
and acknowledged the same in my presence.

Michelle Butler
Notary Public

My Commission Expires: 3/31/2014



Michelle L. Butler
Commonwealth of Virginia
Notary Public
Commission No. 7342391
My Commission Expires 3/31/2014

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

APPROVED AS TO FORM:

By: [Signature]
Its: Zoning Administrator

Notary Public

JANICE G. WEBER
Notary Public
Commonwealth of Virginia
354571
My Commission Expires Feb 28, 2017



IRREVOCABLE LETTER OF CREDIT NO. 99992857

Board of Supervisors
County of Loudoun County
Leesburg, Virginia 20175
Attn: Building and Development - Bonds Management

Gentlemen:

We, Virginia Commerce Bank, 4221 Walney Road, 3rd Floor, Chantilly, VA, 20151, this 16th day of January, 2014, hereby authorize you to draw on us for the account of Kirkpatrick Green, LLC (the "Developer"), 11950 Democracy Drive, Suite 310, Reston VA 20190, up to an aggregate amount of **U.S. Dollars Four Hundred Three Thousand and 00/100 (\$403,000.00)**, such amount not available except by your drafts at sight accompanied by certification of the Director of Building and Development of Loudoun County, Virginia that the Developer failed to complete installation of the improvements in accordance with the approved plans and specifications submitted with the project known as Kirkpatrick West Community Recreation Center designated as STPL-2007-0037 and approved revisions thereof however such revisions may be designated, or otherwise failed to perform in accordance with the Proffer Performance Agreement dated January 16, 2014, between Kirkpatrick Green, LLC and the Loudoun County Board of Supervisors.

We hereby further agree that:

(a) Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at our office on or before July 16, 2016.

(b) Funds available under this Letter of Credit may be drawn in such amounts and at such times as determined by the Director of Building and Development, in his sole discretion, provided that the amount drawn shall not exceed the aggregate amount specified herein.

(c) We shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of the underlying contract or obligations between the Developer and the beneficiary of this credit.

(d) It is a condition of this Letter of Credit that it will be automatically extended for an additional period of six (6) months from the present or future expiration date hereof, unless ninety (90) days prior to such date we will notify you, in writing by registered or certified mail or overnight courier, that we elect not to renew this Letter of Credit for such additional period.

Letter of Credit No. 99992857

(e) The amount of any draft drawn hereunder must be endorsed on the reverse side hereof. All drafts must be marked "Drawn under Irrevocable Letter of Credit No. 99992857, Kirkpatrick Green, LLC".

(f) Except as expressly provided herein, this Letter of Credit is governed by the laws of Virginia and is subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 ("UCP"). In the event of any conflict between Virginia law and the UCP, Virginia law shall prevail. For choice of forum purposes only, this credit shall be deemed to be a contract made under the laws of Virginia, and the parties expressly agree that the court of the Commonwealth of Virginia shall have exclusive jurisdiction to decide any questions arising hereunder.

Dated this 16th day of January, 2014.

Virginia Commerce Bank

ATTEST:

Kristen Cunningham
STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit:

By: *Brian P. Murphy*
Brian P. Murphy
Senior Vice President

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Brian P. Murphy as Senior Vice President of Virginia Commerce Bank, whose name is signed to the foregoing, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this 16 day of January, 2014.

My Commission Expires: 10/31/14

Kayra Nadine Stallard
Notary Public

My Notary Registration Number: 7059037

